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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,880	03/06/2002	James E. Pate	62385	2762

109 7590 08/26/2003

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
P. O. BOX 1967
MIDLAND, MI 48641-1967

EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,880

Applicant(s)

PATE ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 04
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-19 are pending in this application filed March 06, 2002.

Applicant's claims are directed toward process for preparing a cosmetic formulation.

Claim Rejections - 35 USC § 112

15.

Claims 1-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The above stated claims are viewed as indefinite because of applicant's use of relative terms. The terms "high, partial, and advanced" are relative terms. Exactly what is meant by the terms "high, partial and advanced"? These terms render the claims indefinite in that applicant has set no limit for said term and has not clearly defined exactly what is meant by "high, partial and advanced". The terms "high, partial and advanced" are relative terms because what would be considered "high, partial, and advanced" to one might not be considered "high, partial, and

advanced" to another without further guidance and direction appearing in the claims for one of ordinary skill in the art to ascertain the meets and bounds of the claimed limitations. Limitations from the specification will not be read into unpatented claims to determine the meets and bounds of said limitations. In re Prater and Wei 162 USPQ 541. Unpatented claims are given the broadest reasonable interpretation consistent with the supporting disclosure, and the limitations in the specification are not read into unpatented claims without a proper claim basis therefore. In re Zeltz 893 F.2d 319, USPQ 1320 (Fed. Cir 1989). It is not readily apparent to the Examiner what applicant intends by said claims. The Examiner interprets the claims to be nothing more than a cosmetic with and oil-in-water emulsion.

Claim Rejections - 35 USC § 102

16.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17.

Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Simon et al USP 6,228,348 B1.

Simon et al disclose compositions in the form of an oil-in-water emulsion, it's use as a cosmetic and the process of making the same. In column 6, lines 16-30 Simon further discloses that other additives may be present in the referenced composition such as preservatives, sunscreens, fragrances, antioxidants etc. In column 5, Simon further discloses that the oil rich compositions consists of 80% or better of the oil phase. Additionally in column 5, Simon further discloses the specific oils which may be employed. In Examples 1, 3, 4 and 6, Simon also discloses that the referenced composition contains cyclomethicone. Example 5, discloses the presence of dimethicone as the specific silicone elastomer. Simon discloses each and every aspect of the invention as claimed by the applicant in the instant case.

18.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Simonnet et al. USP 6,126,948 and Chandar et al. USP 5,811,112 are both cited to show oil-in-water emulsions employed for cosmetic preparations.

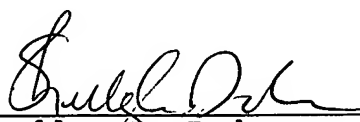
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19.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (703) 308-2445. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7922. A facsimile center has been established in Crystal Mall 1, Room 7C11. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. The Patent examining Fax Center telecopier numbers are (703) 872-9306 and (703) 308-4556. Use of the new Crystal Mall 1 Center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 109 O.G. 30 (November 15, 1989).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

August 22, 2003